

## **REMARKS**

### ***Status of the Claims***

Claims 1-55 are presently pending in this application. Applicant elected to prosecute Species II (claims 1-21 and 27-55) in the paper filed February 15, 2007. By this paper, claims 7, 9, and 19-26 are cancelled, and claims 1, 8, 10, 12, 13, 31, 34, 37, 40, 41, 44, and 47 are amended. Consideration of claims 1-6, 8, 10-18 and 27-55 is respectfully requested.

### ***Amendments to the Claims***

Claims 7, 9, and 19-26 are cancelled without prejudice. Applicants reserve the right to pursue these claims in a divisional application. Independent claims 1, 31, 37, and 40 are amended. Support for the amendments can be found throughout the specification, for example in paragraphs [0036], [0044], [0046], and [0049]. Claims 8, 10, 12, 13, 34, 41, 44, and 47 are amended to provide correct dependencies and/or antecedent bases in light of other claim amendments. No new matter is added.

### ***Objections to the Drawings***

The Examiner objects to the drawings as failing to show a clamp member and post as recited in claims 29 and 30. Applicant respectfully disagrees with the Examiner's request for drawings illustrating a clamp and a post, as drawings showing such features are not necessary. 35 U.S.C. §113, first sentence, states that an "applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented." Clamps and posts for mating a device to a support are well known in the art, and no person having ordinary skill in the art needs to see a drawing of a clamp or post to understand the subject matter being claimed. Accordingly, drawings showing such features are not necessary for the understanding of the invention. Reconsideration and withdrawal of this requirement is therefore respectfully requested.

### ***Objections to the Claims***

The Examiner objects to claims 29 and 30 as including a clamp member and post not shown in the drawings. As explained above, drawings are not necessary showing such features, so these claim

objections are moot.

***Rejections Pursuant to 35 U.S.C. § 102***

Claims 1-14, 16, 17, 27, 29-48, and 51-53 are rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,676,666 of Oxland et al. ("Oxland"). Applicant respectfully disagrees.

*Claims 1-6, 8, 10-14, 16, 17, 27, and 29-36*

Independent claim 1 recites an elongate member having a proximal portion and a distal portion having a surface adapted to retract tissue. A guide member is coupled to the distal portion of the elongate member, and it has first and second pathways extending therethrough for receiving a tool, and a cut-out portion extending between the first and second pathways. The guide member is adapted to be positioned in relation to a spinal implant such that each of the pathways in the guide member is aligned with at least one corresponding bore formed in the spinal implant to guide a tool through the bore, and the cut-out portion provides visual access to the spinal implant. Independent claim 31 similarly recites an elongate member having a proximal portion and a distal portion that is adapted to retract tissue. A guide member is coupled to the distal portion of the elongate member and it is adapted to be juxtapositioned on a spinal implant. The guide member includes at least one pathway extending therethrough for receiving a tool, and at least one cut-out portion in a front sidewall of the guide member adapted to provide visual access to the spinal implant.

Oxland does not disclose a guide member having first and second pathways extending therethrough for receiving a tool, as required by claims 1 and 31. Oxland generally discloses an installation device (62) with a single elongate member having two blades (68, 70). A guide head (72, 74) is attached to the blades (68, 70) of the elongate member with two guide cylinders (80, 82) disposed therein. As can be seen in FIG. 1a, the guide cylinders (80, 82) each include pathways extending therethrough. The guide cylinders (80, 82), and thus their respective pathways, are separate, unconnected elements, as can be seen in FIG. 1b which shows one guide cylinder (82) before its disposal in the guide head (74). Therefore, there is not a single guide member having first and second pathways but instead two guide cylinders (80, 82), each with their own pathways.

Additionally, Oxland does not disclose a guide member having a cut-out portion, as further required by claims 1 and 31. As discussed above, the guide cylinders (80, 82) and their respective pathways are separate, unconnected elements. There is no cut-out portion extending between the separate, unconnected guide cylinders (80, 82), much less between their respective pathways. Claim 31 also requires that the cut-out portion be formed in a front sidewall of the guide member, and Oxland does not even include a front sidewall, much less one having a cut-out portion.

Accordingly, independent claims 1 and 31, as well as claims 2-6, 8, 10-14, 16, 17, 27, 29-36 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Claims 37-39

Independent claim 37 recites first and second tissue retractor and guide devices adapted to couple to a spinal implant. The first and second devices have a guide member having opposed front and back sidewalls, opposed lateral sidewalls extending between the front and back sidewalls, and at least one pathway formed therein for receiving a tool. The first and second devices also have an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion coupled to the back sidewall of the guide member. Claim 37 also recites a cross member removably connected to the first and second tissue retractor and guide devices.

Oxland does not disclose a cross member removably connected to first and second tissue retractor and guide devices. Oxland does not teach any type of cross member, much less one that is removably connected to the first and second tissue retractor and guide devices. Oxland merely teaches a single installation device, and the device does not include any type of cross member that is connected to a second device. Accordingly, independent claim 37, as well as claims 37 and 38 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

Claims 40-48 and 51-53

Independent claim 40 recites a spinal fixation plate having a superior portion with at least one bore formed therein for receiving a fixation device effective to mate the superior portion to a first vertebra, and an inferior portion with at least one bore formed therein for receiving a fixation device

effective to mate the inferior portion to a second, adjacent vertebra. Claim 40 also recites at least one tissue retractor and guide device adapted to be juxtapositioned on the spinal fixation plate. The at least one tissue retractor and guide device has a guide member having opposed front and back sidewalls, opposed lateral sidewalls extending between the front and back sidewalls, and first and second pathways formed therein for receiving a tool. At least a portion of the first and second pathways are in communication with one another. The at least one tissue retractor and guide device also has an elongate member having a proximal, handle portion, and a distal, tissue-retracting portion coupled to the back sidewall of the guide member. The at least one pathway in the guide member is aligned with a bore formed in the spinal fixation plate when the guide member is juxtapositioned on the spinal fixation plate.

Oxland does not disclose a guide member having first and second pathways formed therein with at least a portion of the first and second pathways being in communication with one another. As discussed above, the guide cylinders (80, 82) in Oxland are separate elements, as are their respective pathways. The pathways are simply not in communication with one another. Accordingly, independent claim 40, as well as claims 41- 48 and 51-53 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

### ***Rejections Pursuant to 35 U.S.C. § 103***

Claims 15, 18, 49, and 50 are rejected pursuant to 35 U.S.C. § 103(a) as being made obvious Oxland in view of U.S. Patent No. 4,686,972 of Kurland ("Kurland"). As explained above, Oxland does not teach or even suggest all of the elements of independent claims 1 and 40. Kurland does not remedy the deficiencies of Oxland. Kurland is directed to a surgical femoral deflector and drilling guide and does not concern or even ever mention spinal implants or spinal fixation plates. Therefore, claims 15 and 18, which ultimately depend from claim 1, and claims 49 and 50, which ultimately depend from claim 40, distinguish over Oxland and Kurland, taken alone or combined, and represent allowable subject matter.

### ***Conclusion***

Applicant submits that all claims are in condition for allowance for at least the reasons discussed above, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the

Application No. 10/777,019  
Amendment dated  
Reply to Office Action of May 7, 2007

Docket No.: 101896-234 (DEP5100CIP)

undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Dated: July 26, 2007

Respectfully submitted,

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